

**MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
September 15, 2003
Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Senator Mary Jane M. Garcia, co-chair, at 10:10 a.m. in Room 311, State Capitol.

PRESENT

Rep. Gail C. Beam, Co-Chair
Sen. Mary Jane M. Garcia, Co-Chair
Sen. Ramsay L. Gorham
Rep. J. Paul Taylor
Rep. Gloria C. Vaughn

ABSENT

Sen. Richard C. Martinez

Advisory Members

Sen. Joseph J. Carraro

Sen. Manny M. Aragon
Sen. Dede Feldman
Sen. Steve Komadina
Sen. Linda M. Lopez

Staff

Maha Khoury
Cenissa Martinez

Guests

The guest list is located in the meeting file.

Human Services Department, Medical Assistance Division

Caroline Ingram, director, and Roger Gillespie, deputy director, both of the Medical Assistance Division of the Human Services Department, updated the committee on the breast and cervical cancer treatment program. The program started in July 2002, and 82 percent of program costs are paid by the federal government. They discussed eligibility for the program. One hundred eighty-eight women have been screened for breast and cervical cancer through the program. Services are provided for pre-cancerous conditions. Discussions ensued on tobacco settlement funding, income eligibility requirements and whether physicians throughout the state are aware of this program. The committee discussed possible Medicaid cuts and whether this program is on the list of programs that may be cut by the governor.

Department of Health, Behavioral Health Services Division

Pilo Bueno, program manager, and Jose Esquibel, staff manager, both of the Prevention Services Bureau of the Behavioral Health Services Division of the Department of Health,

described the bureau's duties and went over their handouts. They described the State Tobacco Education and Prevention Program (STEPP) and its implementation, outcome, evaluation and findings. This program produced good results in smoking prevention and cessation, and included a media campaign. Two hundred fifty thousand dollars was given to this program for fiscal year 2003 but it was not funded for fiscal year 2004. The New Mexico Alliance of Boys and Girls Clubs ran the SMART Moves Program in fiscal year 2003 and was given \$600,000 for that year. Good results came from this program as well. Mr. Bueno discussed the goals of the SMART Moves Program for fiscal year 2004. This program was given \$1 million for that year. Both Mr. Bueno and Mr. Esquibel described how the language that appropriated \$1 million to SMART Moves was too narrow and gave the division no discretion in where the money should go or how it should be spent. The language in the legislation tied their hands such that they had no choice but to give the contract to the Alliance of Boys and Girls Clubs. Discussions ensued on the difference between these programs and other prevention and cessation programs, such as TUPAC and outreach to schools.

Committee Business

The committee approved the minutes of its second meeting, changed the date of the fourth meeting from November 4 to November 21, 2003 and recessed for lunch from 12:00 noon to 1:40 p.m.

Update on Tobacco Settlement Funds

Melissa Vigil, Department of Finance and Administration, and Steve Neel, Legislative Finance Committee, went over the history of the tobacco settlement funds and the settlement revenue forecast. Payments made in fiscal years 2003 through 2006 will be deposited in the general fund. There is \$62.2 million in the Tobacco Settlement Permanent Fund, which is now part of the general fund reserves. Beginning in fiscal year 2007, the fund will revert one-half of payments received to the Tobacco Settlement Program Fund and one-half to the Tobacco Settlement Permanent Fund. Mr. Neel went over the adjustment factors and risk forecasts to the settlement payments.

Attorney General Bills: Escrow Fund Amendments and Statutory Release Bill

Glenn Smith, deputy attorney general, and Tony Ogden, litigation and compliance counsel for the National Association of Attorneys General (NAAG) Tobacco Project, discussed the need for quarterly rather than annual payments into the escrow fund by non-participating manufacturers (NPM). NPMs can escape their escrow obligations if they operate for less than one year or change ownership before the payment is due. The Allocable Release Bill is designed to close a loophole in the model legislation. The current law does not take into account how much of the NPMs' market was actually in New Mexico. Seventeen states have enacted this bill. The purpose of the escrow fund is to have a fund against which the state can recover a judgment against the NPMs. NAAG does not know who all the NPMs are. There are several hundred, and a majority of them are not located in this country.

Council of Independent Tobacco Manufacturers of America

John Underwood, attorney-lobbyist, introduced Tony Troy, attorney for the Council of Independent Tobacco Manufacturers of America (CITMA), who argued that the settlement agreement was due to the conduct of tobacco manufacturers, not due to the sale of tobacco. The deleterious effects of tobacco are paid for by tobacco taxes imposed by states. The bills advanced by NAAG are for propping up the market share of big tobacco companies, which has slipped since 1998. Mr. Troy then gave a short history of the settlement agreement. He argued that NPMs are paying more than the participating manufacturers. CITMA does not object to quarterly payments if they are imposed at the discretion of the attorney general for bad actors. Committee members questioned Mr. Troy about the identity of his clients and he responded that members of CITMA are reluctant to reveal themselves because they fear retaliatory action. He said that there are 12 to 14 CITMA members and they are domestic, not foreign, companies. He agreed to provide a list of its members. Committee members expressed their concern about CITMA's membership not being known. Co-chair Beam asked Mr. Troy to respond to the quarterly payment bill when he provides a list of CITMA members to the committee.

Subsequent Participating Manufacturers (SPM)

Michael Johnson, Santa Fe Natural Tobacco Company, an independent subsidiary of R.J. Reynolds, stated that his company supports these bills and that it paid \$11 to \$13 million into the settlement agreement this year. John Long, Liggit Group, stated that many small tobacco companies support this legislation. These bills help to provide a level playing field among the various manufacturers. NPMs are paying one cent on each dollar that participating manufacturers pay. Many NPMs would not be in business if not for this loophole. Rob Wilkey, Commonwealth Tobacco, serves in the house of representatives in Kentucky. It is a small company. It paid \$120 million into the agreement this year. It abides by the agreement's restrictions on advertising and marketing and it is in favor of this legislation. These bills will not put the NPMs out of business. The bills simply implement the intent of the settlement agreement to level the playing field by requiring escrow payments. Nick Allard, Top Tobacco, stated that his company has less than one percent of the market and it is making substantial payments. Small companies that are SPMs are hurting the most. They are the ones that brought the issue to NAAG. Top paid over \$5 million into the agreement last year. Foreign tobacco manufacturers are pouring their products into this country. Price makes a difference to kids who may start to smoke. Top is in favor of these bills. Mr. Wilkey stated that many companies set up several shell companies that disappear before it is time to make the escrow payment. At this time, they can operate up to 15 months without making a payment. Quarterly payment requirements would prevent this from happening. Discussions ensued on the reasons SPMs joined the agreement.

Public Comment

Nathan Bush, New Mexicans Concerned About Tobacco, stated that his organization has no position on these bills at this time.

Committee Business

The committee adjourned at 4:30 p.m.